

1 McPartland Law Offices
2 Bryce P. McPartland, WSBA #37418
bpm@mcpartlandlaw.com
3 Bryton A. Redal, WSBA #56946
bar@mcpartlandlaw.com
4 2830 W. Broadway Avenue
5 Moses Lake, Washington 98837
6 p. 509.495.1247
f. 509.651.9430
7 Attorney for Plaintiffs Lidstrom

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

**ARLIN LIDSTROM and LAVERNE
LIDSTROM, husband and wife and
the marital community comprised
thereof,**

PLAINTIFFS,

**SCOTLYNN COMMODITIES INC.,
a foreign business entity; and YING
H. ZHU, individually,**

DEFENDANTS.

CAUSE NO. 4:23-CV-05144-RLP

**PLAINTIFFS' REPLY
STATEMENT OF MATERIAL
FACTS NOT IN DISPUTE**

January 28, 2025
Without Oral Argument

Replying to Defendants' Statement of Disputed Material Facts:

1. No dispute.
 2. No dispute.
 3. No dispute.

1 4. Generally undisputed, though it bears clearing up. Defendants generally
2 agree that the accident occurred while Defendant Zhu was making his left turn, but
3 dispute that the accident occurred when Defendant Zhu “began” to make his left turn.
4 Defendant Zhu only traveled 65 feet from the stop bar to impact. *ECF 78-2* at p. 16.
5 Given the point of impact, and Defendant Zhu’s need to travel across two lanes of a
6 highway before turning left onto northbound SR 395 (*ECF 78-2* at p. 5), it is correct to
7 say that the collision occurred when Defendant Zhu “began” to make his left turn.
8

9 5. No dispute.

10 6. No dispute.

11 7. Disputed. Defendants’ disputed fact does not actually dispute that
12 Defendant Zhu was looking right when Defendant Zhu began accelerating. Defendant
13 Zhu testified that he looked to the right, then looked back at Mr. Lidstrom, then looked
14 to the right a second time and decided to pull into the intersection. *ECF 71-1*, p. 131-132
15 (Zhu Dep 119:15-120:2). Defendants dispute this fact, but in doing so, concede that
16 Defendant Zhu’s last look was to his right. Defendants also dispute Plaintiffs’ contention
17 by saying that Defendant Zhu looked left again “while he was making his maneuver.”
18 *ECF 93*, ¶ 7. That does not dispute Plaintiffs’ contention that Defendant Zhu was looking
19 away from Mr. Lidstrom when Defendant Zhu began accelerating.

20 8. Defendants in essence do not dispute this fact, either, and they agree that
21 novice drivers are taught that they need to be able to clear an intersection before
22 oncoming traffic arrives. Defendants qualify their response by pointing out that there are
23

1 general exceptions to the notion that novice drivers are taught they must be able to clear
2 an intersection before oncoming traffic arrives, but when Mr. Desmond was asked again
3 if drivers are taught they need to be able to clear an intersection before traffic arrives, he
4 replied “That’s what’s listed in the Commercial Vehicle Manual.” *ECF 71-1* at 173, 80:1-
5
6. The fact is not disputed by either party.

7 9. No dispute.
8
9 10. No dispute.
10
11 11. Defendants, again, do not actually dispute this fact, but point to vague
12 “exceptions” to try to escape Mr. Desmond’s clear testimony that commercial vehicle
13 operators are taught not to enter an intersection if doing so causes oncoming traffic to
14 brake or swerve. The lone “exception” Mr. Desmond vaguely refers to is where a
15 roadway is not designed to accommodate a commercial vehicle. *ECF 71-1* at p. 171,
16 78:15-79:6. However, Mr. Desmond included in his report that the route Defendant Zhu
17 chose was appropriate and reasonable, and that there were no restrictions or other
18 apparent conditions prohibiting Defendant Zhu from utilizing the route he selected.
19
20 *Redal Declaration*, Exhibit A at 17. The fact should be considered undisputed.
21
22 12. No dispute.
23
24 13. No dispute.
25
26 14. No dispute because Defendants’ “dispute” does not make any sense – a
27 driver cannot be in the right turn lane more than 942 feet away from the stop bar because
the right turn lane extends only 920 feet (*ECF 70*, ¶ 15), and only fully forms at 750 feet

1 away from the stop bar (*Id.*). So, at 942 feet away from the stop bar, a southbound driver
2 on SR 395 could not be in the right turn lane.

3 15. No dispute.

4 16. Disputed. See Response to Paragraph 14 above. At 942 feet, southbound
5 traffic on SR 395 has not arrived at the beginning of the right turn lane, so all of
6 Defendants' points regarding the right turn lane at this point are irrelevant and completely
7 misleading. Further, Defendants' "dispute" tries to subtract braking from the definition
8 of "evasive action" when evasive action means any action taken to avoid something.
9 Braking fits within that definition. Regardless, both parties agree that had Defendant Zhu
10 began accelerating when Mr. Lidstrom was 10.7 seconds away from the collision, it was
11 impossible for Mr. Lidstrom not to be forced to take evasive action. For what it is worth,
12 Defendant points to the same meaning of evasive action in its response to Paragraph 22
13 without any issue with braking fitting that definition. And while Defendants' "disputes"
14 regarding the right turn lane are irrelevant here given the length of the right turn lane,
15 Mr. McKee also testified that Defendant Zhu could have simply not pulled out in front
16 of southbound traffic to prevent the collision. *ECF 71-1* at 164-165, 127:2-128:1.

17 17. Disputed. See Response to Paragraph 7 above, specifically noting that
18 Defendants do not actually dispute that Defendant Zhu's last look before accelerating
19 was to his right.

1 18. Disputed. See Response to Paragraph 7 above, specifically noting that
2 Defendants do not actually dispute that Defendant Zhu's last look before accelerating
3 was to his right.

4 19. Disputed. Mr. McKee, in his expert report, specifically referenced the
5 emergency situation Mr. Lidstrom was confronted with as a result of Defendant Zhu's
6 actions. *ECF 71-1* at 24.

7 20. No dispute generally, but the fact applies equally to southbound traffic in
8 any lane on SR 395.

9 21. No dispute generally, but the fact applies equally to southbound traffic in
10 any lane on SR 395.

11 22. Disputed. Mr. McKee's analysis, specifically the pages cited by Defendants
12 in Paragraph 22 of its Response, does contain a difference between drivers in the
13 southbound through lane or the turn lane. *ECF 78-2* at 25, 30. This makes sense, because
14 regardless of the lane of travel, if a southbound driver is traveling 60 mph (the posted
15 speed limit), their perception response time would remain the same. Defendants concede
16 this exact point in the following sentences, getting it correct when referring to any
17 oncoming motorist. Mr. McKee also specifically testified that perception reaction time
18 began at 7.7 seconds, i.e., the moment Defendant Zhu began accelerating. *ECF 71-1*,
19 157-158, 85:10-86:15. Further, Defendants mistakenly say that an oncoming vehicle on
20 SR 395 has 7.7 seconds to perceive, react, and avoid crashing into Defendant crossing
21 the intersection. But Mr. McKee clarifies that it is 7.7 seconds minus 5.8 seconds to start
22
23
24
25
26
27

1 braking (*ECF 71-1* at 158, 86:3-15), meaning a total of 5.8 seconds of perception reaction
2 time (7.7s - 5.8s = 1.9s) **not** that southbound traffic has 7.7 seconds to avoid a collision.
3 Defendants actually concede this point in response to Paragraph 21, so it is bizarre they
4 take issue with it here.
5

6 23. No dispute.

7 24. No dispute that this is what Mr. Zhu testified to, with the qualification that
8 Defendant Zhu's testimony does not make sense when he was not looking Mr.
9 Lidstrom's direction when he began accelerating and he had less than 0.8 seconds to:
10

- 11 • Turn his head from all the way to his left to all the way to his right, away from Mr.
12 Lidstrom's vehicle;
- 13
- 14 • Determine the location of the tractor-trailer heading northbound on SR 395;
- 15 • Determine the location of the second tractor trailer behind the first tractor-trailer
16 on northbound SR 395;
- 17
- 18 • Decide to accelerate into the intersection;
- 19
- 20 • Apply his left foot to the clutch pedal;
- 21
- 22 • Shift his manual transmission into gear;
- 23
- 24 • Move his foot from the brake pedal to the accelerator pedal;
- 25
- 26 • Apply his foot to the accelerator pedal; and
- 27 • Begin accelerating into the intersection.

28 *ECF 69, 16-18.*

1 Defendant Zhu could not have performed all of the above in 0.8 seconds, and
2 because he could not, he cannot accurately testify that he saw Mr. Lidstrom in the right
3 turn lane when Defendant Zhu began to accelerate from the stop bar.

4 25. No dispute.
5

6 Dated this 10th day of January, 2025.
7

8 McPARTLAND LAW OFFICES, PLLC.
9

10 */s/ Bryton A. Redal*
11 Bryce P. McPartland, WSBA #37418
12 Bryton A. Redal, WSBA #56946
13 2830 W. Broadway Avenue
Moses Lake, Washington 98837
14 Attorneys for Plaintiff

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the December 6, 2024, I electronically filed the foregoing
17 Motion was filed with the Clerk of the Court using the CM/ECF System, which will
18 send notification of such filing to:

19 Jeff Sbaih – sbhaih@wscd.com sinclair@wscd.com ou@wscd.com
20 Dylan Jackson – jackson@wscd.com quade@wscd.com gockley@wscd.com
21 Wilson Smith Cochran Dickerson
1000 Second Avenue / Suite 2050
Seattle, Washington 98104

23 */s/ Bryce P. McPartland*
24 Bryce P. McPartland, WSBA #37418
25
26
27